STATE OF CALIFORNIA FISH AND GAME COMMISSION FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Sections 1.91, 27.60, 27.65, 27.82, 27.83, 28.26, 28.27, 28.28, 28.29, 28.54, 28.55, 28.56, 28.58, and 28.90

Title 14, California Code of Regulations

Re: Recreational Groundfish Fishing Regulations for 2005 and 2006 for Consistency with Federal Rules

- I. Date of Initial Statement of Reasons: July 30, 2004
- II. Date of Pre-adoption Statement of Reasons: September 17, 2004
- III. Date of Final Statement of Reasons: October 25, 2004
- IV. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: June 24, 2004

Location: Crescent City

(b) Discussion Hearing: Date: August 27, 2004

Location: Morro Bay

(c) Adoption Hearing: Date: October 22, 2004

Location: Concord

V. Update:

No substantive changes have been made in the originally proposed regulatory language. However, the following minor editorial changes have been made for the sake of clarity:

- a. Italicized all genus and species names.
- b. Removed an unnecessary word from the list of groundfish and associated species in Sections 27.60 and 27.82.
- c. Clarified that changes could happen in-season in all applicable sections.
- d. Clarified that the sub-limit in subsection 27.82(e)(2) was a sub-bag limit.
- e. Replaced the word "nor" with the word "or" in a list of species that may not be taken in the California Rockfish Conservation Area or in the Cowcod Conservation Area.
- f. Removed a duplication of the phrase "when trolling" in subsection 27.83(b)(5).
- g. Modified subsections 28.28(b) and 28.29(b) so that "limit" was consistently used to describe bag limits.

At the October 21-22, 2004 Fish and Game Commission meeting, the Commission adopted the regulations as proposed with a one fish bag limit for cabezon for all fishing modes and a one fish bag limit for greenlings for all fishing modes.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

Responses to public comments were included in the <u>Pre-adoption Statement of</u> Reasons (see Attachment A).

- 1. <u>David Hull</u>, Chief Executive Officer, Humboldt Bay Harbor, Recreation, and Conservation District, letter dated September 27, 2004
 - (a) Asked the following questions:
 - (1) What is the scientific/biological rationale for the reduced rockfish season off of the Humboldt and Del Norte County coastline?
 - (2) What is the economic impact of enacting the reduced season proposal on the local economy?
 - (3) What is the five-year annual average tonnage of recreational rockfish taken off the Humboldt County coast?
 - (4) What is the biomass of the rockfish resources off the Humboldt County coast?
 - (5) What alternatives besides reducing the season were examined to meet the Department's goals?
 - (b) Opposes the proposed management measures in the northern region.
 - (c) Requests that the Commission delay action on the management measures in the northern region until the scientific need and social and economic impacts can be explained.
 - (d) Requests that alternatives to season and size limits be explored.

Department Response:

(a) The Department responded to Mr. Hull's questions in a letter dated September 23, 2004 (see Attachment B). The proposed regulations are intended to keep the total fishing mortality for each stock within the harvest limit (optimum yield or OY, recreational harvest guideline, or recreational harvest target) established for that stock for the year. The harvest limits are set at a level that should prevent overfishing and help rebuild overfished stocks. Many groundfish species are found in multi-species assemblages, and species with relatively low harvest limits may constrain fishing for other species. In the area off Humboldt and Del Norte counties, the

- projected catches of black rockfish and canary rockfish are limiting the fishing season and fishing depths.
- (b) Comment noted. The Department worked with constituents to maximize fishing opportunity while staying within the established harvest limits.
- The Department recommends that the Commission not delay (c) action. Groundfish are jointly managed by the state and federal governments. Delaying the Commission's decision would prevent the state from also having regulations effective on January 1, 2005, the date the federal regulations will become effective. More importantly, the regulations are needed to keep the total fishing mortality of the various groundfish species and species groups within established harvest limits. It is important to keep the catch below the harvest limits to prevent overfishing and to rebuild overfished stocks. The Department recognizes that the four-month season (July through October) for boat-based angling may have economic impact on small businesses in California, primarily commercial passenger fishing vessels (CPFVs). July through October is typically the period of greatest activity for CPFVs in the Northern Rockfish and Lingcod Management Area (RLMA), though the CPFV operations contribute only about 10 percent of total recreational catches for this area. This time period coincides with weather trends when the winds and seas generally do not prohibit fishing. In addition, divers and shore-based anglers will be allowed to fish all year.
- (d) The Department and Council considered a variety of management measures (alone and in combination) that would constrain total fishing mortality by keeping catches within harvest limits that were established to maintain groundfish stocks at, or restore them to, healthy levels. The management measures considered include: modifications to bag and sub-bag limits; modifications to size limits; and various combinations of season and fishing depth closures for each RLMA. The seasons for boat-based anglers that allowed catches of rockfish to stay within the harvest limits in the Northern RLMA are: July through October (the proposed season), May through September with no retention of black rockfish in May or September (two months of limited fishing and three months of open fishing), June through September 14 (three and a half months), and June through August (three months).
- 2. <u>Twenty-three business owners</u>, letter dated October 6, 2004; <u>David M. Treat</u>, letter dated October 6, 2004; and <u>G. R. Councilman</u>, letter dated October 6, 2004
 - (a) State that the restrictions in the Northern RLMA are unnecessary.

(b) Recommend a five-month season (May 1 through September 30) in the Northern RLMA.

Department Response:

- (a) See Response #1(a), above.
- (b) The catch projection for a season from May 1 through September 30 in the Northern RLMA is 122 metric tons of black rockfish (26 metric tons over the harvest target of 96 metric tons). See Response #1(d), above.
- 3. <u>Dick Perrone</u>, oral comment at the October 21-22, 2004 Fish and Game Commission meeting.
 - (a) Opposes the diver and shore-based angler exemptions.
 - (b) Recommends a slot limit for lingcod.
 - (c) Recommends a two-fish limit for California halibut.
 - (d) Recommends that the season in the Northern RLMA open in June.
 - (e) States that marine protected areas (MPAs) will hurt the local economy.

Department Response:

- (a) Comment noted.
- (b) The proposed season, bag limit, and 24-inch size limit are expected to keep the catch below the recreational harvest limit. It is not necessary to have an upper limit at this time.
- (c) Comment noted. California halibut are not federally-designated groundfish. Comment is beyond the scope of the proposed regulations.
- (d) See Response #1(d), above.
- (e) Comment noted. Comment is beyond the scope of the proposed regulations.
- 4. Ross S. Smith, oral comment at the October 21-22, 2004 Fish and Game Commission meeting.
 - (a) States that the Commission, National Marine Fisheries Service and the Department are making laws without facts or research; states that the methods for determining catch are inaccurate and that the Nearshore Fishery Management Plan is inaccurate; and states that lingcod and nearshore rockfish stocks are rebounding.
 - (b) Appears to recommend an exemption for seniors like the exemptions for divers and shore-based anglers.
 - (c) Appears to recommend a longer season in the Northern RLMA.

<u>Department Response:</u>

(a) Comments noted.

(b) The proposed exemptions to the seasonal closures for divers and shore-based anglers were designed to increase recreational fishing opportunities for divers and anglers of all ages while keeping the total catch within the established harvest limits. An exemption to the seasonal closures for senior citizens establishes a special class of anglers (*i.e.*, those over a specified age). The length of the open fishing seasons (*i.e.*, open periods for all fishing modes) would need to be decreased if senior citizens were allowed to fish from boats during the closed seasons. Thus, increasing the fishing opportunities for senior citizens would result in decreased fishing opportunities for all other anglers and divers.

The Pacific Fishery Management Council (PFMC) has recognized the following modes of recreational fishing, which have been included in federal regulations for 2005: shore-based angling, private boat angling, diving/spearfishing, and charter boat. The basis for these categories originates from the federal Marine Recreational Fisheries Statistics Survey (MRFSS). The survey database allows for estimates of recreational take from each of these modes, allowing the catch from each mode to be tracked against harvest limits, and in some cases, allows for differing bag and season regulations by mode. The Department currently has no means for estimating catch by age of angler, because neither the Department nor MRFSS has collected catch data by angler age. Thus, the Department is unable to estimate the impact of the proposed senior citizen exemption on the total catch.

Moreover, determining who is a "senior citizen" would create difficulty for enforcement staff as additional effort would be needed to check identification such as drivers' licenses that demonstrates proof of age.

- (c) See Response #1(d), above.
- 5. <u>Paul Weakland</u>, oral comment at the October 21-22, 2004 Fish and Game Commission meeting.
 - (a) Recommends that the Department provide the margin of error for its catch projections.
 - (b) Opposes lowering the bag limit for cabezon.

Department Response:

- (a) Comments noted. Comment is beyond the scope of the proposed regulations.
- (b) The Department recommends lowering the bag limit for all fishing modes to one cabezon. Estimates of projected catch indicate that the recreational harvest limits for cabezon is likely to be exceeded if the Commission adopts the exemptions for divers and shore-based

anglers. Setting the bag limit at one fish will provide the longest possible season and protect the cabezon resource.

6. <u>Al Carlton</u>, e-mail dated October 10, 2004

- (a) Withdraws previous recommendation on creating a slot limit for lingcod (see Attachment A, VI.7(a)).
- (b) Recommends a lingcod size limit of 24 inches for both recreational and commercial harvesters.

Department Response:

- (a) Comments noted.
- (b) The proposed regulations set the size limit at 24 inches, the same as the commercial size limit.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at: California Fish and Game Commission 1416 Ninth Street Sacramento, California 95814

VIII. Location of Department Files:

Department of Fish and Game 1416 Ninth Street Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

The Department and Council considered a variety of management measures (alone and in combination) that would constrain total fishing mortality by keeping catches within harvest limits that were established to maintain groundfish stocks at, or restore them to, healthy levels. The management measures considered include:

- Modifications of bag and sub-bag limits
- Modifications to size limits
- Various combinations of season and fishing depth closures for each RLMA
- Various subdivisions of each RLMA
- Prohibit groundfish fishing in "hot spots" (areas with relatively high abundance of overfished species)
- Modifications to the number of fishing hooks allowed

- Establishment of bait restrictions
- Establishment of separate harvest limits for each RLMA
- Establishment of separate restrictions for each fishing mode

(b) No Change Alternative:

The no-change alternative would conflict with the federal regulations that will be effective for 2005 and 2006. In addition, catch projections for the no-change alternative show that it won't constrain the fishery to the established harvest limits for 2005 and 2006. If the harvest limits are exceeded, federal rebuilding goals for overfished groundfish stocks may not be met and the health of stocks could be jeopardized. If the no-change alternative is chosen and the recreational fishery exceeds the established harvest limits, the Council would take action to close the recreational fishery in federal waters, and would ask the state to do the same in state waters. The Council might also close the commercial fishery if the overage was large enough to result in the OY being reached.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting
Businesses, Including the Ability of California Businesses to Compete with
Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Proposed additions to the list of species included in the closures to protect rockfish and lingcod are not expected to have an economic impact since few of the additional species are typically caught by recreational anglers. Flatfishes and leopard shark are caught by recreational anglers, and provisions have been made to allow for the take of these species under certain circumstances.

Proposed alterations to the boundaries are not expected to have a direct economic impact. Rather, the increased resolution in management areas allows the regulations to be tailored to each area's biological and socio-economic needs. This way the State can help minimize the impacts and disruption to recreational fishing activities, while maintaining healthy fish stocks and a satisfying recreational experience.

Businesses providing services to divers and shore-based anglers are likely to have a positive economic benefit, because the proposed regulations allow these groups to fish year round.

The proposed changes to the provisions for lingcod and California scorpionfish are not expected to have an economic impact. Also, the proposed changes to the Department's authority to take in-season action are not expected to have any direct economic impact. Impacts would only occur if the advertised harvest limits were reached before the end of the year and the Department closed the fishery. The proposed changes include provisions that would allow the Department to reduce effort by modifying bag and size limits in-season if the catch is higher than projected. This would lessen the likelihood that the fishery would need to be closed before the end of the year and lessen the potential economic impact of a closure. In addition, the proposed regulations would allow the Department to increase the duration of a season or modify bag and size limits if the catch was lower than projected. A positive economic impact would be expected if the regulations were relaxed in-season.

The proposed changes to the fishing seasons and fishing depths may have economic impact on small businesses in California, primarily Commercial Passenger Fishing Vessels (CPFV). The greatest impact may be in Del Norte and Humboldt counties (Northern RLMA) where the fishing season was reduced from twelve to four months (July through October). July through October is typically the period of greatest activity for CPFV's in the Northern RLMA, though the CPFV operations contribute only about 10 percent of total recreational catches for this area. This time period coincides with weather trends when the winds and seas generally do not prohibit fishing. In the area from Cape Mendocino to Lopez Point (North-Central RLMA and Monterey South-Central RLMA), the duration of the fishing season proposed for 2005 and 2006 is the same as for 2004, and, thus, no economic impact is expected. In the area from Lopez Point to Point Conception (Morro Bay South-Central RLMA), the proposed season is four months shorter than in 2004. This is not expected to represent a significant economic impact, since the time period January through April amounts to only about 5.2 percent of the annual groundfish fishing activity in this area. South of Point Conception (Southern RLMA),

the proposed season will be three months shorter than the 2004 season. The closure October through December does represent a period typically active for the CPFV operations in this area, based on recent catch history. In 2003, about 31 percent of total annual recreational groundfish catches in the Southern and Morro Bay South-Central RLMAs (combined) were from CPFV operations. Of those catches, 29 percent and 17 percent of annual CPFV catches occur in the period September-October and November-December, respectively (based on MRFSS RecFIN data from 1999 when fishing was less regulated and indicative of less constrained fishing activities. 1999 MRFSS). Earlier studies on marine recreational fishing expenditures, for all species, show that as much as \$51 million is spent on CPFV fees (2001 NMFS). Thus, in a worst case situation, the proposed regulations for the Southern and Morro Bay South-Central RLMAs could represent combined revenue losses of several millions of dollars to CPFV operations. For example, if groundfish represent 50 percent of the target species for all fishing trips on Southern California CPFV's, this could amount to \$8 million in lost revenues (\$51 million x 50 percent x (29 percent/2) = \$3.7 million for October only, and \$51 million x 50 percent x 17 percent = \$4.3 million for November and December). However, overall economic impacts in the Southern RLMA may be reduced by the number of alternative marine sportfishing opportunities available to recreational anglers and divers in this area.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There are no new fees or reporting requirements associated with the proposed regulations.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None.

(f)	Programs mandated on Local Agencies or School Districts:
	None.
(g)	Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:
	None.
(h)	Effect on Housing Costs:
	None.

Updated Informative Digest/Policy Statement Overview

Changes in California's ocean sport fishing regulations for all federally-designated groundfish (including rockfish, lingcod, cabezon, kelp greenling, and California scorpionfish), and associated state-managed species (rock greenling, ocean whitefish and California sheephead) are proposed for consideration by the Fish and Game Commission (Commission) for 2005 and 2006. The proposals include: changes to management areas, changes to fishing seasons and fishing depths, and changes to size and bag limits. These regulatory changes are needed to help achieve groundfish management goals, including rebuilding of overfished stocks of rockfish and lingcod, and will help achieve consistency between state regulations and federal groundfish regulations for 2005 and 2006.

The proposed management measures (regulations) are intended to keep the total fishing mortality for a stock within the harvest limit (optimum yield or OY, recreational harvest guideline, or recreational harvest target) established for that stock for the year. Many groundfish species are found in multi-species assemblages, and, thus, species with relatively low harvest limits may constrain fishing for other species. Combinations of closed seasons, closed areas, size limits, and bag limits are proposed to prevent exceeding all harvest limits.

PROPOSED CHANGES

- 1. To protect rockfish and lingcod, existing regulations establish seasons and depth closures for 56 species of federal groundfish and three state-managed species found in association with rockfish and lingcod (rock greenling, California sheephead, and ocean whitefish). The proposed regulations would expand the list of species covered by the season and depth closures to all species of federal groundfish as well as rock greenling, California sheephead, and ocean whitefish. The following exemptions to this provision are proposed:
 - a. Allow retention of 8 species of flatfish that are federally-designated groundfish during groundfish closures and in areas closed to groundfish fishing if the flatfish are taken with sanddab gear (No. 2 size or smaller hooks and a weight of two pounds or less).
 - b. Allow anglers to take leopard shark (a federal groundfish) in the following enclosed bays during groundfish closures and in areas closed to fishing for groundfish: Humboldt Bay, Drakes Estero, Bolinas Bay, Tomales Bay, Bodega Harbor, San Francisco Bay, Elkhorn Slough, Newport Bay, Alamitos Bay, San Diego Bay, and Mission Bay.
 - c. Exempt divers using spearfishing gear and shore-based anglers from most of the groundfish closures. Divers and shore-based anglers would not be allowed to take lingcod during the months of January, February, March, and December. Fishing gear other than spearfishing gear would be prohibited onboard the vessel or watercraft used while diving under this exemption.

- 2. The proposed regulations would subdivide the existing Central Rockfish and Lingcod Management Area (RLMA) into three areas (North-Central RLMA, Monterey South-Central RLMA, and Morro Bay South-Central RLMA) to further increase fishing opportunities while keeping the catch within the harvest limits. The boundaries for the proposed areas are:
 - a. North-Central RLMA 40°10′ N. lat. (near Cape Mendocino, Humboldt County) to 37°11′ N. lat. (at Pigeon Point, San Mateo County)
 - b. Monterey South-Central RLMA 37°11' N. lat. (at Pigeon Point, San Mateo County) to 36°00' N. lat. (near Lopez Point, Monterey County)
 - c. Morro Bay South-Central RLMA 36°00' N. lat. (near Lopez Point, Monterey County) to 34°27' N. lat. (at Point Conception, Santa Barbara County).
- 3. The proposed limits on bocaccio reflect the proposed division of the Central RLMA into three regions.
- 4. The proposed regulations would redefine the boundary for Cordell Bank as a 100-fathom depth contour encompassing Cordell Bank.
- 5. Different season dates and fishing depths are proposed for each of the five proposed RLMAs:
 - a. Northern RLMA (Oregon/California border near Cape Mendocino): A fourmonth season (July October) with fishing permitted in waters less than 40 fathoms. For exemptions, see #1 above.
 - b. North-Central RLMA (near Cape Mendocino Pigeon Point): A five-month season (July November) with fishing permitted in waters less than 20 fathoms. For exemptions, see #1 above.
 - c. Monterey South-Central RLMA (Pigeon Point near Lopez Point): A fivemonth season (July – November) with fishing permitted in waters less than 20 fathoms. For exemptions, see #1 above.
 - d. Morro Bay South-Central RLMA (near Lopez Point Point Conception): A five-month season (May September) with fishing permitted in waters from 20 to 40 fathoms. For exemptions, see #1 above.
 - e. Southern RLMA (Point Conception California/Mexico border): A sevenmenth season for all groundfish and associated state-managed species, except California scorpionfish, with fishing permitted in waters from 30 to 60 fathoms from March through June and in waters less than 40 fathoms from July through September. A three-month season for California scorpionfish with fishing permitted in waters less than 40 fathoms in October and November and in waters less than 20 fathoms in December. For exemptions, see #1 above.
- 6. The proposed regulations would limit the species of rockfish that may be taken in waters less than 20 fathoms in the Cowcod Conservation Areas; only fishing for nearshore species of rockfish (black, black and yellow, blue, brown, calico, China, copper, gopher, grass, kelp, olive, quillback, and treefish rockfishes) would be allowed. The proposed regulations would allow fishing for sanddabs and some federally-designated flatfish with sanddab gear, and would continue to allow fishing for lingcod, cabezon, greenlings, California scorpionfish, California sheephead, and ocean whitefish in waters less than 20 fathoms in the Cowcod Conservation Areas.

- 7. The proposed regulations for lingcod would increase the bag limit to two fish, decrease the size limit to 24 inches, and decrease the minimum fillet size to 16 inches in length. The proposed regulations would establish a special closure during primary spawning and nesting season for lingcod. Thus, in addition to the proposed closures for all groundfish species, all recreational take of lingcod would be prohibited in the months of January, February, March, and December.
- 8. The proposed regulations would allow the Department to change bag and size limits for federal groundfish species and associated state-managed species in-season when the Department projects that one of the specified annual harvest limits will be exceeded prior to the end of the year. The proposed regulations would also give the Department the authority to open a fishing season, increase a bag limit, and/or decrease a size limit for federal groundfish species and associated state-managed species if catches earlier in the year were less than predicted. The proposed regulations would allow the seasons, fishing depths, bag limits, and size limits to differ by geographic locations, time of year, mode of fishing (private boats, commercial passenger fishing vessel, shore-based anglers, and divers), and gear used. The proposed regulations clarify that the harvest limits established in federal regulations may be optimum yield (OY), recreational harvest guidelines, or recreational harvest targets.
- 9. In every section of the regulations that may be changed in-season, the proposed regulations state that fishing rules may change during the year or **in-**season, and provide information on how to obtain the latest fishing rules. The latest fishing rules will be available on the Department's website, on an automated phone line, and at Department offices.
- 10. The proposed state regulations provide the Commission with the following options for modifying existing bag limits for cabezon and greenlings:
 - (1) Cabezon reduce the cabezon bag limit from three fish to (1-2) fish; and/or establish a different bag limit (1-2 fish) for divers and shore-based anglers, recognizing that divers and shore-based anglers will be authorized to fish year-round for these species.
 - (2) Greenlings reduce the bag limits for greenlings of the genus *Hexagrammos* (kelp and rock greenlings) from two fish to one fish; and/or establish a different bag limit (one fish) for divers and shore-based anglers, recognizing that that divers and shore-based anglers will be authorized to fish year-round for these species.
- 11. The following changes are proposed for clarity or consistency:
 - a. Add a list of all the federal groundfish species by category (categories include groups such as sharks, flatfish, and rockfish) to the regulations.
 - b. Modify the section on diving and spearfishing to explain that all types of fishing gear except spearfishing gear are prohibited aboard any vessel or non-motorized watercraft when spearfishing for groundfish and associated species in an area under a groundfish season or depth closure.
 - c. Divide the subsection on special bag limits into two subsections: a subsection that lists special limits for groundfish and associated statemanaged species, and a subsection that lists the special limits for all other

- species. In the subsection that lists the species that do not have bag limits, note which species are the federally-designated groundfish.
- d. Divide the subsection on Cowcod Conservation Areas into two subsections: one describing the boundaries, and the other describing fishing restrictions.
- e. Modify the language of the section on the California Rockfish Conservation Areas for clarity, and add exemptions for divers and shore-based anglers.
- f. Modify the subsections on open seasons and areas in the sections on California sheephead, lingcod, cabezon, kelp and rock greenlings, California scorpionfish, rockfish, and ocean whitefish to simply refer to Section 27.82, Title 14, CCR, which contains the season and fishing depth for all these species.
- g. Make minor non-substantial changes to various sections for consistency in presentation of size limit information.

No substantive changes have been made in the originally proposed regulatory language. However, the following minor editorial changes have been made for the sake of clarity:

- a. Italicized all genus and species names.
- b. Removed an unnecessary word from the list of groundfish and associated species in Sections 27.60 and 27.82.
- c. Clarified that changes could happen in-season in all applicable sections.
- d. Clarified that the sub-limit in subsection 27.82(e)(2) was a sub-bag limit.
- e. Replaced the word "nor" with the word "or" in a list of species that may not be taken in the California Rockfish Conservation Area or in the Cowcod Conservation Area.
- f. Removed a duplication of the phrase "when trolling" in subsection 27.83(b)(5).
- g. Modified subsections 28.28(b) and 28.29(b) so that "limit" was consistently used to describe bag limits.

At the October 21-22, 2004 Fish and Game Commission meeting, the Commission adopted the regulations as proposed with a one fish bag limit for cabezon for all fishing modes and a one fish bag limit for greenlings for all fishing modes.

Addendum to Final Statement of Reasons

Amend Sections 1.91, 27.60, 27.65, 27.82, 27.83, 28.26, 28.27, 28.28, 28.29, 28.54, 28.55, 28.56, 28.58, and 28.90

Title 14, California Code of Regulations

Re: Recreational Groundfish Fishing Regulations for 2005 and 2006 for Consistency with Federal Rules

The Fish and Game Commission, in adopting the regulatory language of this rulemaking, adopted the Department of Fish and Game's responses to public comments as set forth in the Final Statement of Reasons.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

Ross S. Smith, written and oral comment at the October 21-22, 2004 Fish and Game Commission meeting.

States that the Commission, National Marine Fisheries Service and the Department are making laws without facts or research; states that the methods for determining catch are inaccurate and that the Nearshore Fishery Management Plan is inaccurate; and states that lingcod and nearshore rockfish stocks are rebounding.

<u>Response</u>: The Commission, National Marine Fisheries Service (NMFS), and the Department are not making laws without facts or research. The file contains abundant data. The Commission, NMFS, and the Department used the best available data and appropriate scientific methods to craft the proposed regulations.

The Nearshore Fishery Management Plan (NFMP) was reviewed by a panel of non-Department scientists who are experts in the areas of fisheries management and marine ecology. The panel found NFMP to be accurate and the management approach appropriate for nearshore fish stocks. The lingcod stock along the west coast of the United States has been declared "overfished" (under the provisions of the Federal Pacific Coast Groundfish Fishery Management Plan), and is being managed under a federal rebuilding plan. While the stock size is increasing, it is still below desired levels of abundance. Some nearshore rockfish species may be abundant, but these species are found in association with species that are known to be at low levels of abundance. Since it is impossible to fish for the abundant species and not catch the less abundant species, the regulations must be designed to keep the catch of less abundant species below the harvest limits for those species.

<u>Paul Weakland</u>, oral comment at the October 21-22, 2004 Fish and Game Commission meeting.

Recommends that the Department provide the margin of error for its catch projections.

<u>Response</u>: Catch projections are based on historic estimates of catch in the areas, depth, and seasons when fishing would be allowed under the proposed regulations. A statistically valid estimate of error cannot be made using the current catch projection methods.

<u>Tom Raftican</u>, United Anglers of Southern California, oral comment at the August 26-27, 2004 Fish and Game Commission meeting.

Opposes changing the regulations in-season. He recommends keeping the same regulations all year, and then adjusting the next year's harvest limit by the difference between the harvest limit and the catch.

Response: The Commission rejects this proposal at this time, because the federal Pacific Coast Groundfish Fishery Management Plan and the federal guidelines (under the federal Sustainable Fisheries Act) do not provide for multi-year optimum yields and cannot accommodate Mr. Raftican's proposal. The proposed regulations are primarily for species managed under the Federal Pacific Coast Groundfish Fishery Management Plan and are proposed to conform state and federal regulations.